

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANTONIO FRANKLIN,

Petitioner,

-vs-

WARDEN, MANSFIELD
CORRECTIONAL INSTITUTION,

Respondent.

:

Case No. 3:04-cv-187

:

Magistrate Judge Michael R. Merz

:

**DECISION AND ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO FILE
SUPPLEMENTAL APPLICATION FOR CERTIFICATE OF APPEALABILITY**

This case is before the Court on Petitioner's Supplemental Application for Leave to File His Application for Certificate of Appealability on Four Additional Grounds (Doc. No. 136), filed *pro se* on November 16, 2009.

Petitioner is represented by appointed counsel in this capital habeas corpus case. A party represented by counsel may not file papers *pro se*. 28 U.S.C. § 1654 provides that "parties may plead and conduct their own cases personally or by counsel." The disjunctive "or" in the statute means that a litigant must choose between proceeding *pro se* and proceeding with the assistance of counsel. *United States v. Jimenez-Zalapa*, 2007 WL 2815563 (W.D. Tenn. 2007)(Breen, J.); *see also United States v. Mosely*, 910 F.2d 93, 97-98 (6th Cir. 1987); *United States v. Vampire Nation*, 451 F.3d 189 (3rd Cir. 2006).

Accordingly, Petitioner's Supplemental Application is denied.

November 17, 2009.

s/ **Michael R. Merz**
United States Magistrate Judge